

CHAPTER 8:

RESTITUTION

**Juvenile Probation Officer and Caseworker
Self-Instructional Manual**

JUVENILE PROBATION OFFICER AND CASEWORKER SELF-INSTRUCTIONAL MANUAL

CHAPTER 8: RESTITUTION

Purpose of Restitution

The Michigan Constitution gives crime victims the right to receive restitution.

Const 1963, art 1, § 24; to compensate the victim rather than punish the juvenile. *People v Grant*, 445 Mich 221; 230 NW 10 (1997).

Offenses for Which Restitution Must Be Ordered

The Crime Victim's Right Act (CVRA) requires restitution for any criminal offense. MCL 780.794(2) requires a court to order restitution at the disposition or sentencing hearing.

The CVRA requires the person preparing a disposition report to notify victims of their right to submit information to the court regarding restitution. MCL 780.791(3)(c).

Claims for Restitution That Arise After Disposition or Sentencing

If a juvenile has been placed on probation, the court has authority to alter or amend conditions of probation while the court has jurisdiction over the juvenile.

MCL 712A.19(1). The court may amend an order based upon new information related to the injury, damages, or loss for which restitution was ordered. MCL 780.766(22); MCL 780.794(22).



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Required Restitution When Ordering an Informal Disposition in a Juvenile Delinquency Case

For an offense that is resolved by an informal method that does not result in a dispositional hearing, by assignment to youthful trainee status, by a delayed sentence or deferred judgment of guilt, or in another way that is not an acquittal or unconditional dismissal, the court shall order restitution. MCL 780.794(2).

Persons or Entities Entitled to Restitution

In all cases, the court must order restitution to victims (including insurance companies that have compensated the victim for losses incurred due to that course of conduct), and to individuals or entities that have provided services to the victims. The court must order restitution to be paid to the victim or the victim's estate first. *People v Bell*, 276 Mich App 342 (2007).

Restitution to Any Victim

In all cases, the court must order restitution to any victim. MCL 780.794(2). "Victim" is defined as an individual who suffers direct or threatened physical, financial, or emotional harm as a result of an offense, or a sole proprietorship, partnership, corporation, association, governmental entity, or any other legal entity that suffers direct physical or financial harm as a result of an offense. MCL 780.794(1)(b).

If the victim is deceased, the court shall order restitution to the victim's estate. MCL 780.794(7).

The offender may be ordered to pay restitution to victims of offenses for which the offender was not convicted or adjudicated.



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In *People v Gahan*, 456 Mich 264 (1997), the court ordered defendant to pay a total of \$25,000 in restitution. Gahan was ordered to compensate more than ten different victims whom he had defrauded in a similar fashion, even though he was only convicted of two counts of embezzlement. The Supreme Court concluded that “the defendant should compensate for all the losses attributable to his scheme, even though some of the losses were not the factual foundation of the charge that resulted in conviction.”

The court may order restitution to a governmental agency for the loss of “buy money” resulting from drug offenses. *People v Crigler*, 244 Mich App 420, 427B28 (2001).

In *People v Letts*, 207 Mich App 479, 481 (1994), the defendant, who pled guilty to breaking and entering an occupied dwelling, was properly ordered to pay restitution for damage caused by a fire that was set by one of his accomplices after the defendant had left the dwelling. The defendant was neither charged with, nor convicted of arson.

Expenses that are not reimbursable under the relevant statutes may not be included in a restitution order. See, e.g., *People v Jones*, 168 Mich App 191, 196 (1988) (the trial court erred in ordering restitution of the victim’s traveling expenses).

In *In re McEvoy* 267 Mich App 55 (2005) the Michigan Court of Appeals determined that a school district qualifies as a victim.



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MCL 780.794(24) states that if the victim is a minor, the defendant may be required to pay to the parent of the victim a reasonable amount for:

- Homemaking and child care expenses;
- Income loss;
- Mileage;
- Lodging or housing;
- Meals; or
- Any other costs incurred.

Time Requirements for Making Restitution

Unless otherwise provided by the court, restitution must be made immediately. The court may require the juvenile to make restitution within a specified period or in specified installments. MCL 780.794(10).

Amount of Restitution Required

In determining the amount of restitution to order. . . , the court shall consider the amount of the loss sustained by any victim MCL 780.795(1).

Codefendants and coconspirators may be held jointly and severally liable for the entire amount of loss.

In *People v Grant*, 455 Mich 221 (1997), defendant pleaded guilty to conspiracy to utter and publish and was ordered to pay \$175,000 in restitution. Defendant appealed, arguing that he played a limited role in the conspiracy and should not be liable for the entire \$175,000. The Michigan Supreme Court disagreed; reasoning that because each conspirator is criminally responsible for the acts of his coconspirators committed in furtherance of the conspiracy, ordering the defendant to pay full restitution was justified.



CALCULATING RESTITUTION

1. Where the Offense Results in Property Damage, Destruction, Loss, or Seizure

If an offense results in damage to or loss or destruction of a victim's property, or in the seizure or impoundment of a victim's property, the court may order the juvenile to pay restitution. MCL 780.794(3)(a)-(c). If return of the property is impossible, impractical, or inadequate, the court may order the juvenile to pay the value of the property on the day it was damaged, lost, or destroyed or the value of the property at disposition.

2. Where the Offense Results in Physical or Psychological Injury, Serious Bodily Impairment, or Death Expenses Related to Physical or Psychological Injury

If an offense results in physical or psychological injury to a victim, the court *shall* order restitution for professional services and devices, physical and occupational therapy, lost income, medical and psychological treatment for the victim's family, and homemaking and child care expenses. MCL 780.794(4)(a)-(e).

3. Expenses Related to the Victim's Death

If criminal conduct results in the death of a victim, the court must order the restitution to be paid to the victim's estate. MCL 780.794(7).

4. Triple Restitution for Serious Bodily Impairment or Death of a Victim

If an offense causing bodily injury to the victim also results in the serious impairment of a body function or the death of that victim, the court may order up to three times the amount of restitution otherwise allowed under the Crime Victim's Rights Act (CVRA).



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Required Reports by Probation Officers

The court may order a probation officer to obtain information pertaining to the amount of loss suffered by a victim, and this information must be included in a disposition report or a separate report, as the court directs. MCL 780.795(1)-(2).

The court must disclose to the juvenile, the juvenile's parent, and the prosecuting attorney all portions of the disposition or other report pertaining to the amount of loss. MCL 780.795(3).

Hearing Requirements and Burden of Proof

When ordering a juvenile to pay restitution, the court is not required to hold a hearing to determine the type or amount of restitution.

Hearings on Restitution Payable by Juvenile's Parent

The court may order the juvenile's parent to pay some or all of the restitution owed. MCL 780.794(15); MCL 780.766(15)(a). The juvenile's parent must be given an opportunity to be heard on the issue. The court must consider "the parent's financial resources and the burden that the payment of restitution will impose, with regard to any other financial obligations the parent may have." MCL 780.766(16); MCL 780.794(16).

A parent who has been ordered to pay restitution may petition for a modification of the amount of restitution owed. The court must "cancel all or part of the parent's obligation due if the court determines that payment of the amount due will impose a manifest hardship on the parent and if the court also determines that modifying the method of payment will not impose a manifest hardship on the victim." MCL 780.766(17); MCL 780.794(17).

The Juvenile Code does not limit the amount of restitution for which a parent may be held liable. See *In re McEvoy*, 267 Mich App 55, (2005).



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Orders for Services by Juvenile in Lieu of Money

“If the victim or victim’s estate consents, the order of restitution may require that the juvenile make restitution in services in lieu of money.” MCL 780.794(6).

Restitution Ordered As a Condition of Probation

If a juvenile is placed on probation, any restitution ordered by the court must be a condition of that probation. MCL 780.794(11).

1. Community Service or Employment

Where restitution is imposed as a condition of probation, the court must also order either community service or employment as a condition of probation. MCL 712A.18(8)(a)-(b). MCL 712A.18(9) authorizes the court to revoke probation if the juvenile intentionally refuses to perform required community service.

2. Wage Assignment by Employed Defendant or Juvenile as a Condition of Probation

The court shall order any employed juvenile to make regularly scheduled payments. If a juvenile misses two or more such payments, the court shall order the juvenile to execute a wage assignment to pay the restitution ordered by the court. MCL 780.794(18).



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Restitution Ordered As a Condition of Probation *(continued)*

3. Review of Restitution as a Condition of Probation

MCL 780.794(18) provides that in each case in which payment of restitution is ordered as a condition of probation, the probation officer or caseworker assigned to the case shall review the case not less than twice yearly to ensure that restitution is being paid as ordered. If the restitution was ordered to be paid within a specified period of time, the probation officer or caseworker must review the case at the end of the specified period of time to determine whether the restitution has been paid. A final review of restitution payment must be conducted not less than 60 days before the expiration of the probationary period.

4. Revocation of Probation for Failure to Comply with Restitution Order

If the probation officer or caseworker determines at any of these required reviews that restitution is not being paid as ordered, he or she must file a written report of the violation with the court, including a statement of the amount of the arrearage and any reasons for the arrearage that are known by the probation officer or caseworker.

A court may revoke probation if the juvenile fails to comply with the restitution order and has not made a good-faith effort to comply with the order. MCL 780.794(11). The court must consider “the juvenile’s employment status, earning ability, and financial resources, the willfulness of the juvenile’s failure to pay, and any other special circumstances that may have a bearing on the juvenile’s ability to pay.”



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MCL 780.794(14) states that “a juvenile shall not be detained or imprisoned for a violation of probation or parole or otherwise for failure to pay restitution unless the court determines that the juvenile has the resources to pay and has not made a good-faith effort to do so.”

Modification of Method of Payment of Restitution

Pursuant to the CVRA, upon petition of the juvenile who is not in willful default of the payment of restitution, a court may modify the method of payment of restitution imposed on a defendant or juvenile, so long as it does not create a hardship for the juvenile or the victim. MCL 780.794(12).

Enforcement of Restitution Orders

MCL 780.794(13) states: “An order of restitution entered under this section remains effective until it is satisfied in full.”

Proceedings to Enforce a Restitution Order

When the juvenile fails to comply with the order, proceedings to enforce the restitution order may be instituted. In such cases, the restitution order is enforced in the same manner as a civil judgment, not by filing a new civil action. The court cannot impose a fee on a victim, victim’s estate, or prosecuting attorney for enforcing a restitution order. MCL 780.794(20).



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Payment of Restitution When Juvenile is Placed in a Juvenile Facility or Sentenced to Jail or the Department of Corrections

Being placed in a facility does not relieve the juvenile of their obligation to pay restitution. If the juvenile receives more than \$50 in a month, 50 percent of the amount over \$50 received by the juvenile is to be deducted for payment of restitution. MCL 780.796b(3). When the amount deducted exceeds \$100, or when the juvenile is released the money must promptly be sent to the victim. MCL 769.1k(2).

Restitution Order is not Dischargeable in a Bankruptcy Proceeding

Restitution order is not dischargeable in bankruptcy cases. MCL 780.794(23).

No Forgiveness (Remission) of Restitution When Conviction or Adjudication Is Set Aside

If a juvenile successfully moves to set aside his or her adjudication, the juvenile “is not entitled to the remission (forgiveness) of any fine, costs, or other sums of money paid as a consequence of an adjudication [or conviction] that is set aside,” including restitution. MCL 712A.18e(11)(a); MCL 780.622(2).

Unclaimed Restitution

If restitution paid by the juvenile is unclaimed or refused by the victim for a period of two years, those funds are to be deposited in the crime victim’s rights fund. MCL 780.794(21).



CRIME VICTIM'S RIGHTS FUND ASSESSMENT

Assessments of Convicted and Adjudicated Offenders

The court must order a “crime victim’s rights fund assessment” against an adjudicated juvenile offender as follows:

- Felony: \$60. MCL 780.905(1);
- “Serious misdemeanor” or “specified misdemeanor”: Must pay an assessment of \$50. MCL 780.905(1); and
- Each juvenile for whom an order of disposition is entered for a “juvenile offense” must pay an assessment of \$20. MCL 780.905(3).

The court may only order one “crime victim’s rights fund assessment” per juvenile delinquency case. MCL 780.905(1) and (2). If the court enters an order pursuant to the Crime Victim’s Rights Act, MCL 780.751, *et seq.*, the court shall only order the payment of one assessment at any dispositional hearing, regardless of the number of offenses.

Fines, Costs, Restitution, Fees, Assessments, and Other Payments

A juvenile, and their parent or guardian ordered to pay court costs, penal fines, probation supervision fees, and other payments or assessments must do so at the time of assessment, except when the court allows otherwise. MCR 1.110.



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Discharge from Probation While Restitution is Still Owed

Restitution should be collected in full during the period the juvenile is on probation. However, there are times when a juvenile has fully complied with all other terms of the probationary order, but still owes restitution. The juvenile may be discharged from probation, but continue to pay the restitution.

An order of restitution remains effective until it is satisfied in full. MCL 780.794(13). As such probation officers and caseworkers are not encouraged to routinely recommend discharge unless all efforts to collect restitution have been made. When all reasonable efforts have been exhausted, though, you may consider recommending discharge. You should advise the recipient of restitution to seek a “money judgment” in district court and provide any necessary assistance by supplying the recipient with documentation. Upon entry of a money judgment by the district court, a recommendation for discharge from probation may occur.

